

## PRO-FORM INSURANCE SERVICES

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### Scope of Services: A Profitable Risk Management Tool

The following material is provided for informational purposes only. Before taking any action that could have legal or other important consequences, speak with a qualified professional who can provide guidance that considers your own unique circumstances.

Developing a clear and comprehensive scope of services not only reduces your professional liability risks, it can increase your profitability. By itemizing all of the many valuable services you provide to clients you help ensure you get adequately paid for your significant contributions to a successful project.

Alternately, the absence of a clear and comprehensive scope of services is a major cause of disputes, claims and counter-claims between design firms and their clients. Without a clear project scope -- negotiated and agreed to by both parties -- client expectations are rarely met and design firms often find themselves facing demands for delivering far more services than they thought they had contracted to perform.

A vague or inadequate scope of services might simply be the result of a client's lack of knowledge of the design and construction process. Because of this lack of knowledge, a client-drafted contract may contain general language such as "provide any and all design services necessary for the completion of the project." In some cases, however, clients may intentionally use language such as "any and all" so that they can hold the design firm fully responsible for project success.

Other clients might purposely specify a bare-bones scope of services as a cost-cutting effort, limiting the specified services in the agreement in an attempt to limit fees. Then, once the project begins, the client may attempt to squeeze every service imaginable out of the design firm for the inadequate fee.

It is your responsibility to ensure that a clear and comprehensive scope of design services is negotiated prior to signing any client agreement. It is far too risky to take on an assignment in which the scope of services is either unclear or inadequate and therefore imprudent and unusual for your profession. For example, by agreeing to perform design services without providing construction-phase services you are prevented from seeing firsthand whether or not the integrity of your design is being maintained. It also denies you the opportunity to clarify ambiguities or correct misunderstandings that arise on the jobsite. And if brought into a claim on such a project, a court or arbitrator may decide that you did not act as a reasonably prudent design professional, even though you were not contracted to perform construction observation as part of your scope of services.

As shown, a clear scope of services can:

1. Minimize misunderstandings between client and design firm and thereby reduce the chances of claims
2. Maximize fees earned by itemizing all services that the design firm will provided.

## **Negotiating Your Scope of Services**

Negotiating a clear scope of services is one of the best ways to make sure you are paid adequately for your work and to optimize your chances of meeting your client's every expectation. The negotiating process helps your client more clearly define needs and expectations and gives you the opportunity to explain how those expectations can best be met. It will also give your client a better understanding of your role in the design and construction process and the full range of services you can provide.

Your goal is to develop a final scope of services that clearly sets forth:

1. Services that you will perform for the agreed-to fee
2. Additional services you can perform for an additional fee
3. Services you will not perform per the client's refusal
4. Required services that will be performed by a third party.

The fourth item – required services performed by others – is often overlooked but very important to spell out. As the prime consultant on a project, you can be liable for failing to ensure a required service was performed up to standard, even if you were not contracted to provide that service directly. This is true even if the third party performing the services enters into a contract directly with the client.

## **Sample Scope of Services**

A useful tool to reach agreement on a reasonable scope of services is a scope of services checklist. You can use the basic services listed in the standard AIA or EJCDC agreement as a starting point and then customize it to fit your own practice. A sample scope of services checklist, adapted from the Coalition of American Structural Engineers, is shown here:

### **Project Development Phase**

- Define scope of structural services
- Assist in development of schedule
- Assist in determining channels of communication
- Assist in determining responsibility for dimensions
- Assist in determining drawing standards and specifications format
- Assist in determining number of meetings and number of site visits
- Negotiate fees and payment schedule
- Execute contract

### **Schematic Design Plans**

- Attend meetings
- Establish structural design criteria
- Prepare studies of alternative structural systems
- Assist in selection of structural system
- Provide structural criteria for geographical consultant

- Assist in determining need for special studies

### **Design Development Phase**

- Attend meetings
- Prepare preliminary foundation drawings
- Prepare preliminary structural design calculations
- Prepare preliminary framing layout drawings
- Prepare typical detail sheets
- Identify pre-engineered structural elements
- Prepare or edit outline specifications for structural items
- Assist preparing preliminary opinion of cost of construction
- Review results of special studies
- Coordinate structural design with special design criteria
- Submit design development documentation for approval

### **Contract Document Phase**

- Prepare structural design of primary structural system
- Designate elements to be designed by specialty engineers, and specify structural criteria for specialty engineers' design of pre-engineered structural elements
- Review effect of secondary or non-structural elements attached to primary structural system
- Attend meetings
- Assist in coordination with building code officials
- Complete structural calculations
- Complete structural drawings
- Prepare or edit specifications for the primary structural system
- Assist in establishing testing and inspection requirements
- Perform checking and coordination of the structural documents

### **Construction Administration Phase**

- ***Bidding and award***
  - Assist in evaluating bidder's qualifications
  - Provide structural addenda and clarifications
  - Assist in bid evaluation
- ***Pre-construction services***
  - Attend meetings
  - Assist in establishing communications procedures
  - Assist in establishing testing and inspection procedures
  - Assist in confirming submittal agency
  - Assist in selection of testing procedures
  - Advise client and contractor regarding which structural elements require construction observation by SER
  - Respond to building department and peer review comments

- ***Submittal review***
  - Review special submittals for items designed by SER
  - Review submittals for pre-engineered structural elements
- ***Site visits***
  - Make site visits at intervals appropriate to the stage of construction
  - Prepare site visit reports
- ***Materials testing and inspections***
  - Review testing and inspection reports
  - Initiate appropriate action to those reports, if required

Your checklist should be specific to all of the services that are normal and customary in your discipline and for the type of project being constructed. The checklist should indicate which items you are to perform as contracted services, which services are to be performed by other parties, and which non-basic services are available for an additional fee. Reviewing such a checklist with the client is a good planning exercise to ensure that all possible services are considered, and makes a useful guide in estimating or pricing your proposed services.

### **Incorporating the Scope Into Your Contract**

The same checklist or a derivative thereof should become a part of your proposal to your client as well as a part of your contract with the client. The easiest way to incorporate the scope into your contract is to formalize the checklist as an addendum or exhibit added to the contract with an appropriate reference within the body of the contract.

It may also be beneficial to include a list of available additional services as a separate appendix. Make it clear that these additional services are not included as part of the basic scope of services and will be paid for by the client in addition to payment for basic services in accordance with your prevailing fee schedule.

A separate addendum should be prepared to itemize services that you offered to perform but that will be performed by others or will not be performed at all. Note in your contract that you offered to perform these services but that the client declined to utilize your services in these areas. Try to include an indemnity clause that holds you harmless from any damages, liabilities or costs arising out of or connected to you not providing these services. If you are unable to get the client to agree to a formal indemnity agreement, note in your contract that you assume no responsibility to perform any services not specifically listed in your scope of services.

Finally, if your client chooses to exclude a service that you consider critical to the success of the project or to public safety, you should call special attention to this. Write a letter reminding the client of the necessity of obtaining these services from other sources and asking the client to provide you with the names of the individuals or firms who will perform these services.

Specifying a clear scope of services may help avert a serious problem with your client. It may also help you expand your scope of services on your next project thereby increasing your fee while reducing liabilities.

### ***CAN WE BE OF ASSISTANCE?***

We may be able to help you by providing referrals to consultants, and by providing guidance relative to insurance issues, and even to certain preventives, from construction observation through the development and application of sound human resources management policies and procedures. Please call on us for assistance. We're a member of the Professional Liability Agents Network (PLAN). We're here to help.